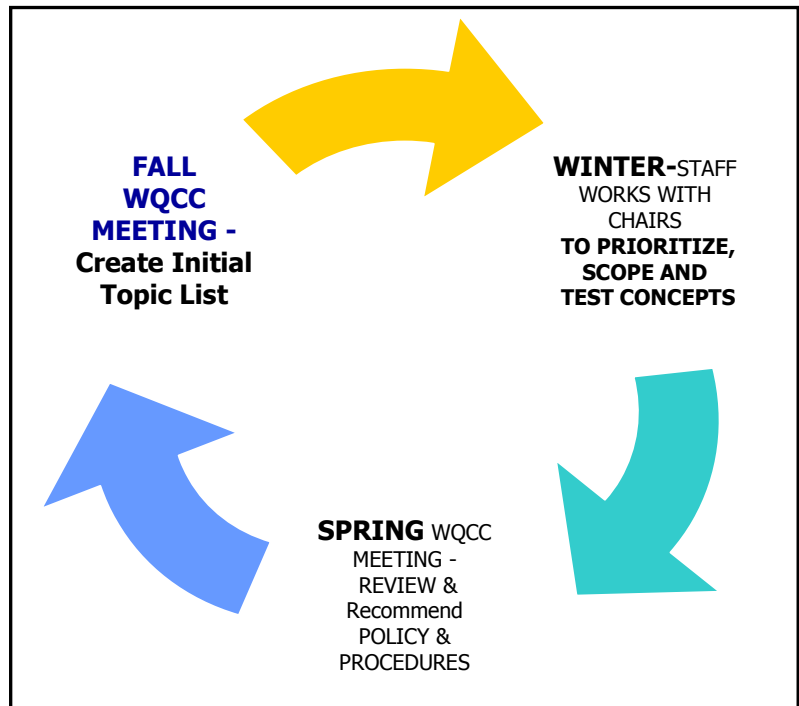


## WATER BOARDS AND CONSISTENCY

**Action 6.2.3.** The State and Regional Water Boards will establish as a standing item at its biannual WQCC meetings the identification and prioritization of areas of inconsistency to be addressed, including where statewide policy is needed.

Staff has prepared the following straw proposal for working with the WQCC on addressing Consistency Issues:

- At the Fall Session WQCC will Identify and Prioritize issues to address, including where statewide policy is needed.
- In Winter, staff will work with the Board Chairs to further prioritize and develop a policy scope. The Chairs will also assist in proposing and reviewing approaches to resolve identified inconsistency issues.
- At the Spring WQCC, members will review and recommend policy and procedures.



**QUESTION 1:** Thinking about this straw proposal – What is your initial reaction to the approach? What would you add, subtract or change about the proposal to improve it?

**QUESTION 2:** The recently adopted strategic plan (see excerpt on pages 3-5) includes several areas in which a need for consistency is already identified and specific approaches are described. Are there additional areas you would like to propose for review and consideration in the 2008-09 WQCC cycle?

**QUESTION 3:** Thinking about the areas identified for the WQCC 2008-09 cycle, please list your top 3 priorities. For those priorities indicate any specific issues or concerns you think will need to be addressed in order to successfully achieve consistency.

## WATER BOARDS AND CONSISTENCY

The Water Boards have traditionally operated in a dynamic environment and our organization has allowed regional variation within a coordinated framework.

Enhancing consistency across the Water Boards will ensure effective, efficient, and predictable processes, and promote fair and equitable application of the laws, regulations, policies, and procedures.

Over the years, some Water Board stakeholders have expressed frustration with a lack of consistency among the Boards. For example, stakeholders and the Legislature have named consistency in enforcement of the State's water quality laws as one of the most important issues facing the Water Boards.

The public participation process and stormwater regulation are two additional high priority areas identified by stakeholders. Such concerns have led to recommendations intended to "fix" the problem, including legislative proposals.

The Water Quality Coordinating Committee (WQCC), a leadership body of the Water Boards, has discussed the consistency issue at some length. As part of that discussion, the WQCC made the following findings in the fall of 2006:

- Stakeholders engaged with more than one region have reported that some decisions are inconsistent
- Regional Water Boards exist because some variation is expected and needed to respond to different geography and local conditions
- Consistency in application of law and policy is valuable
- On questions of law and overarching policy, the State Water Board should provide guidance and build a basic policy framework from which the regions can appropriately tailor action
- Water Boards are committed to developing procedures and policies to minimize inappropriate inconsistency

### Why this issue is so critical to the Water Boards and to our stakeholders

California's diverse geography, landscape, population, social, cultural, and economic context prevent a "one size fits all" approach to managing natural resources. At the same time, consistency can help to ensure that stakeholders receive equitable treatment, and that they understand and work towards common water quality and water rights goals, and that outcomes can be evaluated in meaningful ways. Nearly all stakeholders embrace the importance of some variation to address unique regional/local needs yet want the benefits of consistent interpretation and enforcement of

laws, regulations, and policies. Finding this balance is the challenge.

Long-range approaches to managing the problem Long-range approaches mirror those of the five-year goal (below), just on an expanded scale. They include effective communication of program direction and functional procedures so they may be applied consistently, a method of continuously assessing core functions so that approaches to consistency are adaptive and remain effective, and a process to monitor outcomes.

### What the Water Boards can realistically do in the next five years

Water Boards will target areas where consistency has been raised as a concern, initiate actions to achieve warranted consistency, and ensure improvements are implemented. Actions will be taken to address external and internal input regarding inappropriate inconsistencies in the areas of enforcement,

stormwater, and public participation. The next level of action will be targeted toward achieving a consistent approach to handle issues arising from regulated facilities that fall within two or more Regional Water Board's jurisdictions. Finally, the Water Boards commit to ongoing review and input to maintain a focus on consistency as an area of continuous interest.

### Goal 6. Consistency – Goal, Objectives, and Actions

Enhance consistency across the Water Boards, on an ongoing basis, to ensure effective, efficient, and predictable processes, and to promote fair and equitable application of laws, regulations, policies, and procedures.

**Objective 6.1.** Target consistency improvements in process and policy for Water Board enforcement activities to promote compliance.

**Action 6.1.1.** Adopt and implement by December 2008 revisions to the Water Quality Enforcement Policy to, at a minimum, ensure consistent enforcement response, assessment of penalties for all Class 1 violations, and assessment of liability in excess of the economic gain obtained as a result of non-compliance.

Establish a clear, consistent statewide approach to the prioritization of enforcement targets, based on threats and adverse impacts to beneficial uses, including the identification of Class I violations.

**Action 6.1.2.** Develop uniform hearing procedures for contested enforcement matters, and templates for enforcement activities, including but not limited to subpoenas, administrative

discovery, and investigation reports, by October 2008.

**Action 6.1.3.** Complete re-organization/re-direction of staff to separate enforcement personnel from permitting personnel by December 2009, and instill internal processes for review of draft waste discharge requirement (WDRs) and draft WDR waivers for enforceability beginning in September 2008.

**Objective 6.2.** Target consistency improvements in program delivery identified through past input, and solicit input to identify consistency issues as they arise.

**Action 6.2.1.** Pursuant to Section 13383.7 of the Water Code, by July 1, 2009 the State Water Board will develop guidance for evaluating and measuring the effectiveness of municipal stormwater permits, including guidance on how to measure reductions of pollutant loads and improvements in the quality of receiving waters in a statistically and scientifically valid manner. Unless infeasible in the timeframe specified by the Legislature, the guidance document will

also apply to non-municipal stormwater permits issued by the State. The Water Boards will rely on this guidance in developing all subsequent stormwater permits, commencing with the reissuance of the statewide stormwater permit for Phase II municipal separate storm sewer systems (MS4s), anticipated to occur in mid 2009. That permit will create a baseline for consistency in the municipal stormwater permitting program, including items covered in the guidance document and, to the extent feasible, other issues that

have been raised regarding the Phase I MS4s, including hydromodification and the use of numeric benchmarks, action limits, or effluent limitations. The State Water Board anticipates that solutions developed in the guidance document and the reissued Phase II permit will be used by Regional Water Boards to revise Phase I permits around the State in subsequent years. If that does not occur, the State Water Board will initiate focused statewide policies to

ensure appropriate consistency in stormwater permitting.

**Action 6.2.2.** Implement by July 2009 public participation policies, procedures, or guidelines, as appropriate, to improve Water Board procedures for adopting policies and regulatory actions.

**Action 6.2.3.** The State and Regional Water Boards will establish as a standing item at its biannual WQCC meetings the identification and prioritization of areas of inconsistency to be addressed, including where statewide policy is needed.

**Action 6.2.4.** Establish a pilot program for interagency agreements between Regional

Water Boards when more than one Regional Water Board has jurisdiction over a regulated facility to ensure effective and equitable actions.

**Action 6.2.5.** Initiate a triennial review of the State Water Board's "Statement of Policy with Respect to Maintaining High Quality of Waters in California" (Resolution No. 68-16), beginning with the solicitation of public comments by October 2008 on the need for revisions to the policy and its implementation methodology. The triennial review process will assist the State Water Board in evaluating whether and the extent to which the policy or implementation guidance should be revised.